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Supreme Court, U.S.
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No.

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IN THE
Supreme Court of the United States

**FLYING J INC., TCH LLC, CFJ PROPERTIES,
TON SERVICES, INC., AND TFJ,**

Petitioners,

v.

COMDATA NETWORK, INC.,

Respondent.

—On Petition For A Writ Of Certiorari
To The United States Court Of Appeals
For The Tenth Circuit

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. In conflict with the decisions of this Court and several courts of appeals, did the Tenth Circuit err in reversing the district court's order enforcing a complex antitrust settlement in part because the district court considered the goal of the federal antitrust laws when interpreting the settlement agreement?
2. This Court held in *Anderson v. City of Bessemer City*, 470 U.S. 564, 573-74 (1985), that when there are two permissible views of the evidence, the factfinder's choice between them cannot be clearly erroneous, and a trial judge's decision to credit the testimony of one witness cannot be clear error. Did the court of appeals misapply *Anderson v. City of Bessemer City*, when it held (with one judge dissenting) that the trial court's decision to credit the testimony of one witness on the meaning and intent of a contract was clearly erroneous as a matter of law because: a) the "[trial] court should have considered [the other party's] proffered evidence"; and b) the trial court adopted "almost verbatim" one party's proposed findings of fact and conclusions of law?
3. When, as part of managing its docket efficiently, a trial court requests proposed findings of fact and conclusions of law from both parties after an evidentiary hearing in a complex, technical case and then relies on one party's proposed findings in the court's final ruling following a bench trial, should that procedure make any difference to the court of appeals when reviewing fact findings under the "clearly erroneous" standard?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Under Rule 29.6 of the Rules of this Court, petitioners state as follows:

The Plaintiffs in the underlying case were:

- FLYING J INC., a Utah corporation,
- TCH, LLC, a Utah limited liability company,
- CFJ PROPERTIES, a Utah partnership,
- TON SERVICES, INC., a Utah corporation,
- TFJ, a Utah partnership, and
- NCR CORPORATION, a Maryland corporation.

ConocoPhillips Co., a public company, is a part-owner of TCH, LLC and CFJ Properties. Apart from that, no public company owns shares or an interest in the Petitioners.

Ownership of TCH, LLC: Flying J Inc., a privately held corporation, through a wholly owned subsidiary, is the beneficial owner of 75% of TCH, LLC, a limited liability company that offers the TCH trucker fuel cards and related services to trucking companies and truck drivers. The other 25% of TCH, LLC currently is owned by a subsidiary of ConocoPhillips Co., a publicly held corporation.

Ownership of CFJ Properties: Flying J Inc., through a wholly owned subsidiary, is the beneficial owner of 50% of CFJ Properties, a partnership that owns and operates some of the Flying J travel plazas in the United States. The other 50% of CFJ Properties currently is owned by a subsidiary of ConocoPhillips Co., a publicly held corporation.

NCR Corporation was not involved in the post-settlement proceedings at issue in this appeal and is not a party to this appeal.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Flying J Inc., TCH LLC, CFJ Properties, TON Services, Inc. and TFJ (collectively, "Flying J") respectfully submit this petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Tenth Circuit.

OPINIONS BELOW

The court of appeals' opinion (App., *infra*, 1a-29a), is reported at 405 F.3d 821 (10th Cir. 2005). The district court's order granting Plaintiffs' motion to enforce the settlement agreement (App., *infra*, 30a-59a) is not reported but is available at 2003 U.S. Dist LEXIS 25684 (D. Utah Sept. 25, 2003).

JURISDICTION

The district court had federal question and diversity jurisdiction over the underlying antitrust and tort claims under 28 U.S.C. §§ 1331, 1332, and 1337. It had jurisdiction to enforce the parties' antitrust settlement agreement under *Kokkonen v. Guardian Life Ins. Co.*, 511 U.S. 375 (1994). The court of appeals had jurisdiction to review the district court's order under 28 U.S.C. § 1292(a). The court of appeals originally entered judgment on April 13, 2005, and Petitioners filed a timely petition for rehearing. On August 3, 2005, the court of appeals entered its order denying rehearing and rehearing *en banc*. App., *infra*, 62a-63a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTES AND REGULATIONS INVOLVED

Under this Court's Rule 14.1(f), Fed. R. Civ. P. 52 is set forth in the Appendix, *infra*, 64a-65a.

STATEMENT OF THE CASE

1. After nearly five years of discovery and pretrial preparation in the underlying antitrust case, and on the eve of trial, Respondent Comdata agreed to a comprehensive settlement. As part of that 2001 settlement, Comdata agreed to enter into two license agreements that were crafted to open up the two markets that Flying J contended Comdata had monopolized, and to pay \$49 million in damages to settle Flying J's antitrust and tort claims. The parties' settlement agreement and the order dismissing the suit vested the district court with continuing jurisdiction to enforce the parties' settlement agreement. App., *infra*, 47a-48a, 80a-81a.

Indicating the procompetitive intent of the parties' settlement agreement, that agreement specifically afforded the same relief to Flying J that the public had received as the result of a Federal Trade Commission antitrust enforcement action against Comdata and an ensuing consent order between Comdata and the FTC:

COMDATA, ARBITRON, and CERIDIAN agree that as of the Effective Date of this Settlement Agreement, FLYING J and TCH shall be deemed entitled to receive all the rights, privileges, and benefits afforded by the Federal Trade Commissions Decision and Order dated April 5, 2000 in *In re the matter of Ceridian Corporation*, Docket No. C-3933 ("FTC April 5, 2000 Order").

App., *infra*, 84a (Settlement Agreement § 18). In addition, the Trendar License, whose provisions the Tenth Circuit purported to interpret, specifically incorporated by reference the terms and conditions of the FTC April 5, 2000 Order and attached a copy of it as Exhibit 1 to the License. App., *infra*, 88a (Trendar License, Art. 1).

2. After Plaintiffs filed a motion to enforce the settlement agreement, the district court held a bench trial in 2003

to decide factual issues raised by that motion. Seven witnesses testified at that trial. Based on the evidence, the district court found that Comdata had breached the settlement agreement by failing to implement the Trendar License, and directed Comdata to take steps to comply with its agreement. 2003 U.S. Dist. LEXIS 25684 at *43 (D. Utah Sept. 25, 2003), App., *infra*, 55a.

The Tenth Circuit reversed that order enforcing the settlement agreement, holding that the district court's findings were clearly erroneous as a matter of law because of the court's alleged failure to consider the testimony of one Comdata employee who testified. 405 F.3d at 829, 835, App., *infra*, 10a, 21a ("We review the district court's findings of fact for clear error.... In our review of the record, Comdata produced substantial evidence indicating that it did not contemplate or intend that the Trendar License would lead to proprietary processing of TCH MasterCards at unaffiliated merchants, much less that this would be accomplished through a dual-processing model.... The district court's failure to consider Comdata's evidence was a legal error."). The court of appeals also criticized the district court for "adopt[ing] Flying J's proposed findings of fact and conclusions of law almost verbatim" saying: "Regrettably this appears to be the case." 405 F.3d at 829, App., *infra*, 11a.

3. The court of appeals took note of the strong evidence indicating that Comdata had substantial market power in two concentrated nationwide markets. In the underlying antitrust case filed in 1996, Flying J and its affiliated companies, including TCH, charged Comdata with monopolizing and attempting to monopolize two product markets that affect nearly all U.S. long-haul truck drivers and the truck stops where they purchase diesel fuel. As the court of appeals explained: "Flying J presented evidence in the underlying litigation that Comdata had secured approximately 90% of the